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SUBJECT: TORONTO TERROR PLOT BAIL HEARINGS RESUME, NEW CHARGES FILED

Ref: Toronto 139

Sensitive but unclassified -- please protect accordingly.

¶1. (SBU) SUMMARY: In an unusual move, Canadian prosecutors terminated preliminary hearings in September and decided to move the defendants in the 2006 Ottawa and Toronto terrorism plots directly to trial. Ontario courts will now revisit the confinement conditions of each of the suspected terrorists, though insiders believe the hearings are unlikely to result in changed confinement conditions. The Ontario Superior Court denied bail on October 22nd to the first of the accused to appear before the court. Concurrently with the decision to move directly to trial, the Crown also filed modified charges under Canada's Anti-Terrorism Act against several of the defendants. Consulate law enforcement sources believe the Crown moved to a direct indictment to counteract what they perceived as unnecessary delaying tactics by defense attorneys. END SUMMARY.

¶2. (SBU) The Ontario Superior Court denied bail on October 22nd to Steven Chand, accused in the 2006 Ottawa and Toronto terrorism plots. The bail hearing was the first in a series of proceedings that will take place over the coming weeks as Ontario courts revisit the confinement conditions of the suspected terrorists after Crown prosecutors took the unusual step of terminating preliminary hearings and moving all of the defendants directly to trial. The defendants' bail conditions are not likely to be loosened prior to trial. A publication gag order on all details surrounding the case remains in effect.

¶3. (SBU) Chand's new bail hearing was necessary after the September decision by Crown to terminate preliminary hearings (similar to U.S. grand jury proceedings) in the terror cases, and move directly to trial. The procedure, known as "Preferred Direct Indictment," is rarely used. The Crown's decision provoked furious protests from defense attorneys, as the decision eliminated their opportunity to "preview" the Crown's case, and more importantly, cross-examine crucial witnesses. The move came as Mubin Shah, a once confidential RCMP informant whose credibility has come under attack, was about to testify.

¶4. (SBU) Concurrently with the decision to move directly to trial, the Crown also filed modified charges under Canada's Anti-Terrorism Act against several of the defendants as follows: Jahmaal James with receiving terrorist training in Pakistan and knowingly participating in a terrorist group; Zakaria Amara with instructing a person to carry out an activity for the benefit of a terrorist group; and Saad Gaya with knowingly participating or contributing to the activity of a terrorist group. The Crown dropped charges of providing property to aid and abet a terrorist organization against Yasin Mohamed and Ali Dirie, who were already serving two years in prison on weapons smuggling charges at the time of the other arrests. Dirie and Mohamed remain behind bars on lesser charges related to the plots.

¶5. (SBU) The charges against three suspects, who were youths at the time of the arrest, were stayed by the Crown after the original charges were filed in 2006. However, the Crown has reserved the right to "reactivate" the charges at a later date. Two suspects, Ahmad Ghany and Ibrahim Alkhalel Aboud, have been living with their parents under strict conditions since being released on bail in July ¶2006. The remaining adult suspects are being held in solitary confinement at Maplehurst Correctional Complex in Milton, Ontario.

¶6. (SBU) Consulate law enforcement sources believe the Crown moved to a direct indictment to counteract what they perceived as unnecessary delaying tactics by defense attorneys. During the preliminary hearings, each defendant could individually challenge each piece of Crown evidence and separately cross-examine each Crown witness. The time consumed by the motions of over a dozen defense attorneys eventually persuaded Crown prosecutors to move directly to trial.

¶7. (SBU) COMMENT: Chand's bail hearing was a routine procedural step compared to the Crown's unusual decision (taken with no notice to the defense) of terminating preliminary hearings and moving forward with a direct indictment. The new bail hearings are unlikely to result in changed confinement conditions for any of the suspects. At this point, it is unclear whether the direct indictment procedure was used to paper over gaps in the Crown prosecutors case, a procedure to counteract defense delaying tactics, or simply a reflection of the sensitivity and importance of the terrorism proceedings. END COMMENT.

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